

**PT 98-13**

**Tax Type: PROPERTY TAX**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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**JEWISH COUNCIL FOR YOUTH  
SERVICES**

**Applicant**

**v.**

**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

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**Docket # 95-49-183**

**Parcel Index # 15-28-200-067**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Mr. Barry Ash appeared on behalf of Jewish Council for Youth Services.

Synopsis:

The hearing in this matter was held on April 8, 1997, at the James R. Thompson Center, 100 West Randolph Street, Chicago, Illinois, to determine whether or not Lake County Parcel Index No. 15-28-200-067 qualified for exemption from real estate taxation for the 1995 assessment year.

Mr. Marshall Klein, executive director of the Jewish Council for Youth Services, (hereinafter referred to as the "Applicant") and Mr. Thomas C. Hodge, controller of the applicant, were present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant is a charitable organization; secondly, whether the applicant owned this parcel during all or part of the 1995 assessment year; and lastly whether the applicant was in the process of adapting this parcel for exempt use during

all or part of the 1995 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant is a charitable organization. It is also determined that the applicant acquired this vacant parcel on March 31, 1995. Finally, it is determined that the applicant was not in the process of adapting this parcel for exempt use during the period March 31, 1995, through December 31, 1995. The real estate tax exemption for this parcel for the 1995 assessment year is therefore denied.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that this parcel did not qualify for exemption for the 1995 assessment year, was established by the admission in evidence of Department's Exhibit Nos, 1 through 5A.

2. On September 26, 1995, the Lake County Board of Review transmitted to the Department an Application for Property Tax Exemption To Board of Review, which had been filed by this applicant with the board on May 11, 1995. This application concerned this parcel for the 1995 assessment year. (Dept. Ex. No. 1)

3. On April 4, 1996, the Department notified the applicant that it was denying the exemption of this parcel for the 1995 assessment year. (Dept. Ex. No. 2)

4. By a letter dated April 24, 1996, Mr. Barry Ash, attorney for the applicant, requested a formal hearing in this matter. (Dept. Ex. No. 3)

5. The hearing in this matter which took place on April 8, 1997, was held pursuant to that request.

6. On March 31, 1995, the real estate closing on this parcel was held and the applicant became the owner of this parcel. (Dept. Ex. No. 3I)

7. The applicant was incorporated on November 7, 1907, as The Young Men's Associated Jewish Charities for purposes which included the following:

The object for which it is formed is to inculcate in the Jewish Young men of Chicago, Illinois, a knowledge of their duties and responsibilities in connection with Jewish Charities and philanthropies; . . . .

8. I take Administrative Notice of the fact that the Director of the Department of Revenue has determined that the applicant is a charitable organization in Docket Nos. 67-49-127 and 94-49-475, -476, and -477.

9. The applicant purchased this parcel with the intention of constructing a child care facility, as well as a swimming pool, and other recreational facilities on the parcel. (Tr. p. 12)

10. The applicant funded the purchase of this parcel, which cost \$725,000.00, with a gift from a family named Froehlich. (Tr. pp. 20 & 38)

11. Before the applicant purchased this parcel, it had entered into a contract to purchase this real estate on May 17, 1994. After doing soil testing on this parcel, which was completed on May 20, 1994, the applicant proceed to conduct a Phase I environmental assessment, which was completed on June 24, 1994. (Tr. pp. 17 & 18, Dept. Ex. No. 3I)

12. The applicant engaged JRB Associates, architects, to prepare site plans and preliminary design drawings for it to use at the Village of Buffalo Grove planning proceedings. (Tr. pp. 18-20)

13. On November 7, 1994, the Village Board of Buffalo Grove passed ordinance No. 94-79 approving applicant's preliminary plan for a facility to be built on this parcel. (Dept. Ex. Nos. 3A & 3I)

14. After the applicant acquired this parcel on March 31, 1995, the only other activity which the transcript and exhibits show took place concerning this parcel, during 1995, was that the deed was recorded on May 16, 1995. (Dept. Ex. No. 3I)

15. After acquiring this parcel, the applicant made a business decision not to proceed with construction of the facilities it intended to build on this parcel until it had raised a substantial part of the cost of constructing said facilities. (Tr. pp. 21 & 22)

16. On August 16, 1996, the Buffalo Grove Village Board approved a 2 year extension for the Final Plat Approval. (Dept. Ex. No. 3I)

17. On May 1, 1996, the board of directors of applicant approved a contract with Campbell & Co. for a philanthropic market study. That study was completed on November 12, 1996. (Dept. Ex. 3I)

18. On November 20, 1996, the board of directors of applicant approved a capital campaign for at least \$3,000,000.00. (Dept. Ex. No. 3I)

19. The board of directors determined that it will need at least \$2,000,000.00 to begin construction of the facilities on this parcel. (Tr. p. 32)

20. At the hearing on April 8, 1997, Mr. Klein testified that the applicant had received approximately \$400,000.00 in pledges, pursuant to the capital campaign. (Tr. p. 33)

21. On the date of the hearing, this parcel was vacant and not being used. The applicant has hired a local landscaper to keep the property clean, to remove snow, and to mow the grass. (Tr. p. 32)

#### Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States....

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County

Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

To qualify for an exemption from taxation as a charity, the applicant must demonstrate that there is ownership by a charitable organization and use for charitable or exempt purposes. Fairview Haven v. Department of Revenue, 153 Ill.App.3d 763 (4th Dist. 1987); and Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978).

I conclude that the applicant acquired this parcel on March 31, 1995, and continued to own said parcel through and including December 31, 1995. I also conclude that the Department has determined in Docket Nos. 67-49-127 and 94-49-475, -476 and -477 that the applicant is a charitable organization.

In the case of Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987), the Appellate Court held that property which was under development and adaptation for exempt use qualified for exemption. In that case, Weslin Properties, Inc., on May 26, 1983, purchased a 24.3-acre tract to be developed into an Urgent Care Center, hospital, and related medical facilities. During 1983, Weslin Properties, Inc. approved a site plan, and hired an architect. During 1984 construction on the Urgent Care facility began. In 1985, the Urgent Care Center was completed and occupied. The Court held that the Urgent Care facility qualified for exemption during 1983, but that the remainder of said parcel did not qualify for exemption during that year. The plans for the remainder of said parcel were not complete and Weslin Properties had not satisfied the Court that all of the intended uses of the remainder of that parcel would qualify for exemption. In this case, the applicant had been actively pursuing the approval

of its plans for the facility on this parcel by the Village of Buffalo Grove. Once that approval was obtained, the applicant took title to this parcel, and all activity stopped. There was no activity on this parcel, or concerning this parcel, from the date applicant acquired it through the remainder of 1995. During the following year, on May 1, 1996, Campbell & Company was hired to do a Philanthropic Market Study. The board of directors of the applicant did not approve the capital campaign, for at least \$3,000,000.00, until November 20, 1996. On the date of the hearing, April 8, 1997, the applicant had only received \$400,000.00 in pledges pursuant to that capital campaign. In view of the applicant's decision not to begin construction until at least \$2,000,000.00 had been raised, construction would most certainly not begin for a substantial period of time after the hearing date. While the Department had determined that certain of applicant's activities at other locations were operated in a charitable manner, there is no testimony in this record as to which areas of the facility planned for this parcel, if any, will be operated in a charitable manner. It is therefore clear that as of the date of the hearing, this parcel, like the area of the parcel in the Weslin case, other than the Urgent Care Center and its surroundings, is not entitled to an exemption for 1995 because there is not sufficient evidence that the applicant is actively adapting this parcel for exempt use.

The evidence in this case is that this parcel was vacant and not used during the period March 31, 1995, through December 31, 1995. In the case of People ex rel. Pearsall v. The Catholic Bishop of Chicago, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that a property was intended to be used for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must have begun for the property to be exempt. In the case of Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1st Dist. 1983), the Court held that property which was vacant and not used did not qualify for exemption as property used for exempt purposes.

If at some future time the applicant reaches a point where it begins to meet the criteria concerning adaptation for exempt use as set forth in the Weslin case, I would respectfully

suggest to the applicant that it file an application for exemption for the then current assessment year.

I therefore recommend that Lake County Parcel Index No. 15-28-200-067 remain on the tax rolls and be subject to real estate taxation for the period March 31, 1995, through December 31, 1995.

Respectfully Submitted,

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George H. Nafziger  
Administrative Law Judge  
February 3, 1998